

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

FRANK L. HINTON,

Petitioner,

v.

Civil Action No. 2:09cv96

**WARDEN, UNITED STATES
PENITENTIARY-HAZELTON,**

Respondent.

ORDER

It will be recalled that on October 22, 2009, Magistrate Judge James E. Seibert filed his Report and Recommendation, wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. Petitioner filed his objections on November 4, 2009.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Petitioner in his Petition, filed pursuant to 28 U.S.C. §2241, wherein Petitioner asserts that he was sentenced to a greater term of imprisonment than he was instructed he could receive and that he should have received credit against his federal sentence for time spent in state custody, and the issues raised by Respondent's Motion to Dismiss or, in the Alternative, Motion for Summary Judgment, were thoroughly considered by Magistrate Judge Seibert in his Report and Recommendation. Upon review of the Petitioner's objections, the Court finds that the Petitioner has not raised any issues that were not already thoroughly considered and addressed by the Magistrate Judge in his Report and Recommendation. Moreover, the

Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

ORDERED that Magistrate Judge Seibert's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that Respondent's Motion to Dismiss or, in the Alternative, Motion for Summary Judgment (Docket #26) shall be, and the same hereby is, **GRANTED**. It is further

ORDERED that the Petitioner's Application for Writ of Habeas Corpus pursuant to 28 U.S.C. §2241 shall be, and the same hereby is, **DENIED** and **DISMISSED with prejudice**. It is further

ORDERED that the Petitioner's Motion for Bond (Docket #8), Motion for Writ of ad prosequendum (Docket #9), Motion for Copies of Case Records (Docket #18), Motions for *Non Pro Tunc* (Dockets #22 and #23), and Motion for Release from Custody (Docket #33) shall be, and the same hereby are, **DENIED as moot**. It is further

ORDERED that the above-styled action shall be **STRICKEN** from the docket of this Court. It is further

ORDERED that the Clerk shall enter judgment for the Respondent. It is further

ORDERED that, if a party should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the

Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

ENTER: November 9th, 2009

/s/ Robert E. Maxwell
United States District Judge